

DOWNTOWN & BARTON / KENILWORTH HOUSING OPPORTUNITIES (DBKHO) PROGRAM



A. PROGRAM DESCRIPTION

The Downtown and Barton/Kenilworth Housing Opportunities Program (the Program) is intended to provide financial assistance in the form of a low-interest Loan to promote the development of multiple dwelling units that will create new housing opportunities and support robust local commercial district populations that add vibrancy and support demand for local commercial businesses/services. Activities supported by this program include:

- The creation of at least 10 new dwelling units through the development of a multiple dwelling on vacant land, surface parking areas or the redevelopment of existing buildings;
- A building addition containing at least 10 new dwelling units; and/or,
- The conversion of existing non-residential space into housing consisting of at least 10 new dwelling units.

Approval under this Program may also qualify the Applicant for additional incentives with respect to rental units that meet housing affordability needs, subject to availability. Additional incentives may include any combination of Development Charge and parkland dedication exemptions, capital funding contributions and any other incentive as may be available from time to time for the purposes of encouraging the development of new affordable rental housing. In order to be eligible for additional affordable housing incentives, rental units must meet the definition and criteria established in the City of Hamilton By-law 03-148 to Adopt a Municipal Housing Facility By-law. When affordable housing is developed in conjunction with this Program, this Program constitutes a City affordable housing program for the purposes of the City of Hamilton’s Development Charges By-law 19-142.

This Program will apply within the Barton Village and Downtown Hamilton Commercial District CIPAs, the Barton Street East Strategic Commercial Corridor CIPA (east of the Barton Village Commercial District CIPA) and the Kenilworth Avenue North Strategic Commercial Corridor CIPA as collectively defined through the Revitalizing Hamilton’s Commercial Districts Community Improvement Project Area (RHCD CIPA) By-law.

A Loan provided under this Program shall be provided to the Applicant who is the Owner registered on title and who will be undertaking the improvement/development that is the subject of the Program application.

The Economic Development Division will periodically review the terms and availability of this Program and undertake updates from time to time subject to City Council approval and/or direction.

All costs associated with the improvement/development and the requirements of this Program are to be borne by the Applicant including construction, design, development charges, administration fees, appraisals, professional services, inspections, legal and discharge and registration fees (plus applicable taxes), where applicable.

The City retains the right to assess the reasonableness of costs and which costs are eligible for funding under the terms of the Program.

B. PROGRAM ELIGIBILITY AND LOAN CRITERIA

1. Applications to this Program must meet the goals of the Revitalizing Hamilton’s Commercial Districts Community Improvement Plan (RHCD CIP).
2. This Program will apply within the Barton Village and Downtown Hamilton Commercial District CIPAs, the Barton Street East Strategic Commercial Corridor CIPA (east of the Barton Village Commercial District CIPA) and the Kenilworth Avenue North Strategic Commercial Corridor CIPA as collectively defined through the RHCD CIPA By-law.
3. Notwithstanding paragraph two, this program shall not apply to a currently operating or proposed adult entertainment parlour, body rub establishment, correctional facility, corrections residence, emergency shelter, lodging house or residential care facility as defined in the applicable Zoning By-law or to a property where a designated heritage building has been demolished.
4. The maximum Loan is the lesser of \$4M or 25% of the Cost to Construct Budget for the development that is the subject of the Program application as prepared by an architect / engineer and addressed to the City of Hamilton and dated within six months of the date of application to the satisfaction of the General Manager of Planning and Economic Development (GM). For Loans of \$1M or more, a letter addressed to the City from a third-party quantity surveyor approving the Cost to Construct Budget must accompany the application. For all Loans an estimated appraisal of the completed project as further defined in the Program application shall be submitted at time of application addressed to the City of Hamilton and shall include the replacement cost. All of the aforementioned documents are at the expense of the Applicant.
5. Notwithstanding paragraph four herein, the maximum loan amount outstanding (advances less amounts that have been repaid) under the program to a single developer or related group will not exceed \$10M at one time. Unless waived by the City, the amount equivalent to the remaining loan commitment on partially advanced loans will reduce the

maximum loan amount available. At the discretion of the City, the aggregate of the loans approved to a single developer or related group at one time can exceed \$10M.

6. Only residential units comprising the necessary facilities to meet the definition of a 'Dwelling Unit' or 'Dwelling Unit in Conjunction with a Commercial Use' as contained within Zoning By-law No. 05-200 as amended shall be eligible under this Program.
7. Notwithstanding paragraph two herein, a 'Hotel' and buildings containing less than 10 'Dwelling Units', including 'Single Detached Dwellings', 'Semi-detached Dwellings' and 'Duplex Dwellings', as defined under Zoning By-law No. 05-200 as amended are not eligible for funding under this Program.
8. Prior to any Loan being provided:
 - a. Any outstanding building code, fire code or property standards orders or any other order applicable to the property(s) or the project by any governmental authority shall be rectified; and
 - b. Any tax arrears on the subject property(s) as well as tax arrears on other properties owned by the Applicant within the City of Hamilton shall be paid.
9. Approval and the receiving of financial assistance under this Program shall not preclude eligibility, approval and the receiving of financial assistance for the same subject property(s) under any other available municipal program with the exception of the Commercial District Housing Opportunities Program which shall not be permitted to be combined with assistance under this Program.
10. The maximum Loan term is five years and six months (subject to prior termination on default) commencing from the date of the final advance exclusive of holdback. No extension or renewal shall be granted.
11. Financial assistance under this Program will be provided to an approved Applicant if all terms and conditions of this Program have been satisfied including payment of all property taxes and all eligible works have been completed at the discretion of the GM.
12. The Loan interest rate will be at 0% interest for the first five years. For the last six months of the Loan, interest shall be payable on the principal outstanding at the then prevailing rate established by Council for interest on tax arrears, such interest to be calculated and payable monthly, not in advance.
13. The Loan will be secured through a mortgage registered on title upon the lands to be developed (the "Property") in a position no less than second in priority prior to the first advance of funds. In addition, the Applicant will enter into a Loan Agreement which includes (but is not limited to) the terms and conditions of this program description. The

City’s insurance requirements as well as all other security required shall be in place prior to advancing funds (i.e. personal / corporate guarantees).

14. The City will request security required to secure a commercial loan, which may include the following: Loan agreement; and / or promissory note; and / or personal property security; and / or personal guarantees; and / or corporate guarantees; and / or lien on the property to be improved; and / or collateral mortgage charge registered on the property to be improved; and / or letter of credit in lieu of a second mortgage charge on the property (subject to City’s minimum equity requirements); and / or such other security which may be appropriate or available in the circumstance. In the instance where a personal guarantee is required a personal net-worth statement will also be required.
15. Interest on arrears will be charged per annum at the then prevailing rate established by Council.
16. Applicants shall have no less than 25% equity based upon the appraised value of the property upon completion of the development that is the subject of the Program application including cost of improvements being financed. All mortgages registered on title, including collateral mortgages and non-registered debt as determined by the City, will be included in the equity calculation. The appraisal must be addressed to the City of Hamilton, dated within six months of the date of the application, include replacement cost, be prepared by an accredited member of the Appraisal Institute of Canada (AIC) and, must accompany the application. The cost of the appraisal is at the total expense of the owner.
17. The Applicant must provide supervision of the Project by a Project Monitor acceptable to the City. The Project Monitor will at the cost of the Applicant, and prior to each advance provide proof that is satisfactory to the City that the structural, mechanical and electrical work complies with the approved plans and specifications and all applicable law.
18. Advances are made by the City, upon proof by a third-party quantity surveyor for Loans \$1M or above confirming the value of the work completed. Loans under \$1M require an architect / engineer to confirm the value of the work completed. Advances will also be subject to equity requirements having been satisfied and confirmation that there are no tax arrears on the subject property and on other properties owned by the Applicant within the City of Hamilton and such other conditions as may be required by the City Solicitor.
19. The City may retain from any advance, including the final advance, such holdbacks including but not limited to the basic holdback, finishing holdback, and notice holdbacks as provided for under the *Construction Act* as the City deems prudent. Notwithstanding the foregoing the City will hold back a minimum of 10% of an advance.

20. The City's funding will be advanced in three stages, upon completion of 60%, 80% and substantial completion of the project. Upon proof satisfactory to the City that the proposed development is 60% complete based upon the value of the construction and that equity and / or financing required to that stage of completion has been injected into the development, then the approved City funds will be made available and released proportionately based upon the approved source of funds (equity / financing / City funds). The calculation of the proportion to be advanced will reflect that the first 60% of funding is from non-City sources. Advances will be made in conjunction with financing advances or after proof, satisfactory to the City, of equity injections. At the 60% completion stage of the project, 60% of the loan commitment will be advanced less the Holdback and the per unit administration fee. At the 80% completion stage of the project, 20% of the loan commitment will be advanced less the Holdback. At substantial completion of the project, another 20% of the loan commitment will be advanced less the Holdback.
21. The Holdback will be released following receipt of a written report to the City, satisfactory to the GM, that will include but not be limited to, an updated statement of project costs, confirmation that all of the Units in the Project can be occupied, confirmation of publication of the Certificate of Substantial performance, receipt of statutory declaration(s) in a form satisfactory to the GM and sworn to by the Contractor that states: "All accounts for labour, contracts, subcontracts, products, services, machinery and equipment which have been incurred in the Project, have been paid in full", there are no notices of liens and lien rights have expired and the passage of 60 days since the publication of the Certificate of Substantial Performance.
22. Repayment of the Loan shall occur as follows:
 - a. If the development is not a condominium, If the development is not a condominium, principal is repayable in annual amounts of ten percent (10%), in 12 equal monthly payments, of the principal Loan amount. Payments will commence one year following the substantial completion advance, exclusive of any required holdback. The balance outstanding will be paid by a balloon payment at the end of the Five Year and Six-Month Term. Monthly principal payments will continue during the last six months of the repayment term with interest calculated and payable monthly, not in advance, if not paid earlier and including applicable discharge and registration fees (plus applicable taxes); or
 - b. If the development is a condominium, the repayment regime is as follows: upon sale of individual condominium units, the City will be repaid upon closing 25% of the sale price of the unit until the total Loan amount has been paid in full. In addition to repayment upon sale of individual condominium units, commencing in the second year following the substantial completion advance, ten percent of the principal Loan amount is repayable annually in the second, third, fourth and fifth years following substantial completion unless payments made upon sale of

the individual condominium units are equal to or greater than ten percent of the principal Loan amount in each of the second, third, fourth and fifth years. On the last day of the fifth year following the date of substantial completion advance, a single payment of the balance outstanding, as well as applicable discharge and registration fee (plus applicable taxes) will be required. This single payment as well as applicable discharge and registration fee (plus applicable taxes) can be made up to six months from the last day of the fifth year following the date of the substantial completion advance. Interest shall be charged and payable on the single payment if made after the last day of the fifth year following the date of the substantial completion advance. Interest shall be calculated monthly, not in advance.

23. The Loan may be prepaid at any time without notice, bonus or penalty. Discharge and registration fees (plus applicable taxes) will be required to be paid at such time as the prepayment occurs.
24. Improvements/developments shall commence no longer than two years following the date the Loan is approved by City Council or the Loan will be cancelled. The two-year period may be extended by City Council at their absolute discretion.
25. The deadline for 60% completion of the proposed redevelopment / development will be subject to a date established through consultation with the Applicant and approved by the GM.
26. A per unit administration fee is to be charged to the borrower and will be eligible to be paid out of the Loan proceeds. The administration fees will be paid out of the first Loan advance that flows from the City of Hamilton. All fees will be authorized through a user-fee by-law passed by City Council. The rate of the fees may be changed from time to time as approved by City Council.
27. All property taxes as billed must be paid current and in good standing throughout the development stage as well as during the term of the Loan for any portion of the development retained by the Applicant upon project completion, including condominium units.
28. The City will require, at its sole discretion, specific insurance terms to be met to protect the City's interest.
29. Where a Program application has been submitted by a property owner and accepted by the City but not yet approved by City Council (or City Council's designate), and the subject property(s) are transferred to a new property owner, the City may permit the transfer or assignment of the of the application to the new owner at the sole, absolute and unfettered discretion of the GM. The future owner who has been requested to become the Program

Applicant and receive financial assistance under this Program shall be subject to appropriate due diligence for the purposes of paragraph 34, 35, 36 and 37. An assignment or transfer may require the assignee or transferee to submit an application, assignment or transfer agreement and/or such other documents as determined by the GM in their sole, absolute and unfettered discretion.

30. Deadlines for the submission and approval of building permits and construction start dates are established following a report to Council for approved applications.
31. In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property all monies secured by the mortgage to the City shall forthwith become due and payable.
32. In the event of a Change of Corporate Control where the Owner is a corporation, the Owner covenants and agrees that in the event that:
 - a. the Owner fails to supply the City, in a form satisfactory to the City such information relating to the ownership of its shares as the City may from time to time require or;
 - b. without the written consent of the City first had and obtained:
 - i. the Owner issues or redeems any of its shares or transfers any of its shares;
 - ii. there is a sale or sales of the shares of the Owner which result in the transfer of the legal or beneficial interest of any of the shares of the Owner; or
 - iii. the Owner amalgamates, merges or consolidates with any other corporation; and

The result of any of the foregoing is a change in the effective control of the majority of the voting shares of the Owner, or the requested information is not provided, then all monies secured by the mortgage together with accrued interest thereon shall forthwith become due and payable at the option of the City and the City’s powers of sale hereby given and all other remedies for enforcement shall be exercisable.

33. Approval of an application under this Program is at the absolute discretion of City Council and subject to the availability of funds.
34. Without limiting the discretion as set out in paragraph 33 herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application received from an Applicant where, in the opinion of Council, the commercial relationship between the City and the Applicant has been impaired by, but not limited to, the Applicant being involved in litigation with the City. Applicants shall include but not be limited to the following: the Applicant identified on the

application form and, if a corporation, any person or entity with an interest in the corporation or any officer or director of the corporation as determined by the City in its sole, absolute and unfettered discretion.

35. Without limiting the discretion as set out in paragraph 33 herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application without further consideration where due diligence undertaken by the City identifies property tax arrears owed on the subject property(s) or other properties owned by the Applicant within the City of Hamilton, non-compliance with respect to Zoning By-law regulations or there exist outstanding property standards, building code or fire code orders on the subject property(s).
36. Without limiting the discretion as set out in paragraph 33 herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application where the City determines in its sole discretion that there is a financial risk to the City in terms of the financial capabilities of the Applicant to complete the improvement/development subject to the Program application.
37. Without limiting the discretion as set out in paragraph 33, herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application received from an Applicant where there is credible information that the Applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that they will not conduct themselves with honesty and integrity in undertaking the activity, operation or business for which a Loan under this Program is being sought. For corporate Applicants, the Applicant, for the purposes of this paragraph 37 will be considered to be the corporation, the officers and directors of the corporation and the shareholders and this paragraph 37 shall apply jointly and severally to each of them.
38. Improvements/developments commenced prior to submitting an application are ineligible for funding under this Program. Work commenced after submitting an application but prior to approval may be eligible for funding under the Program with eligibility determined by the GM in their sole, absolute and unfettered discretion. An Applicant shall assume the risk of any costs incurred after an application has been submitted but prior to approval under this Program having been received.
39. Buildings uses and improvements/developments shall conform to the City’s Official Plan(s), applicable Secondary Plan(s), Zoning By-Laws(s), Site Plan approval and any other applicable and approved municipal policies, by-laws or guidelines (e.g. urban design guidelines) and any other laws applicable to the improvement/development.
40. A Program application may be denied by City Council if the improvement/development is not supported by Council notwithstanding any approval of *Planning Act* applications by

any other authority including but not limited to the Local Planning Appeal Tribunal or the Minister of Municipal Affairs and Housing, and that City Council’s decision on the Program application will not fetter its discretion on *Planning Act* applications.

41. City Council’s approval of a Program application can provide for a reduced Loan amount so that no Loan is provided in respect of any portion of the improvement/development which Council does not support notwithstanding any approval of *Planning Act* applications by any other authority including but not limited to the Local Planning Appeal Tribunal or the Minister of Municipal Affairs and Housing, and that City Council’s decision on the application will not fetter its discretion on *Planning Act* applications. In such cases, the Applicant shall be required to provide additional supporting documentation, at the Applicant’s own expense, to support the providing of financial assistance in accordance with City Council’s approval/direction.

C. PROGRAM APPLICATION CRITERIA

A complete Program application shall be submitted to the Economic Development Division prior to the issuance of an above-grade Building Permit for construction. Exceptions may be made at the discretion of the GM.

An application fee is payable upon submission of application. The fee will be authorized through a user-fee by-law passed by City Council. The rate of the fee may be changed from time to time as approved by City Council and will be identified on the Program’s application form.

Approval of an application under this Program is at the absolute discretion of City Council and subject to the availability of funds.

Applications shall include plans, estimates, contracts and other details as may be required to satisfy the City as to the cost of the improvement/development and conformity with the objectives of the Revitalizing Hamilton’s Commercial Districts Community Improvement Plan.

Applicants shall be required to submit information to assist with determining the financial capabilities of the Applicant to complete the improvement/development subject to the Program application and to identify any potential financial risks to the City. Information required to be submitted is at the discretion of the City and may include but may not be limited to, a financial risk assessment, personal/corporate net worth statements and/or business plan.

D. PROGRAM ADMINISTRATION

Economic Development Division staff will review applications for eligibility in collaboration with other City departments as required with approval of applications subject to a decision by City Council in their sole and unfettered discretion.

Applicants and properties will be the subject of due diligence undertaken by the City prior to any approval being provided or payment of a Loan under this Program. This will include, but may not be limited to, confirmation of the following: all property taxes are paid and current on the subject property(s) or other properties owned by the Applicant within the City of Hamilton, the property is in compliance with Zoning By-law regulations, that there are no outstanding property standards, building code or fire code orders on the subject property(s) and that the Applicant is not in litigation with the City. Failure to comply with any of the above will result in an application not being approved or, if the application is approved, non-payment of a Loan under this Program.

Approved Applicants shall be required to enter into a Loan Agreement with the City containing (but not limited to) the terms and conditions set out in this program description.

The City reserves the right to require the submission of any additional documentation or enter into any additional agreements as deemed necessary by the City to ensure the goals and purpose of this Program and the Revitalizing Hamilton’s Commercial Districts Community Improvement Plan are met.

Applications to this Program not yet approved by City Council (or its delegate) shall be subject to any changes to the terms of this Program which are approved by Council prior to the application being approved.